

REMARKS

Applicants respectfully request reconsideration of the above referenced patent application in view of the amendments and remarks set forth herein, and respectfully request that the Examiner withdraw all rejections. Claims 30, 35, 39 and 43 have been amended. No claims have been canceled. Claim 48 has been added. Thus, claims 30-43 and 45-48 are pending.

Examiner Interview Summary

An Examiner Interview was held by telephone on September 20, 2007 between Examiner Yves Dalencourt and Applicants' representative Dermot G. Miller (Reg. No. 58,309). Applicants sought clarification of Examiner Dalencourt's interpretation of cited reference Timm et al., USPN 6,055,268 ("*Timm*"), and argued distinguishing features of Applicants' claimed invention over the *Timm* reference. Examiner Dalencourt respectfully disagreed at least as to whether the claims recited such distinguishing features. Applicants suggested claim amendments to more particularly set forth the distinguishing features of the claimed invention. Examiner Dalencourt stated that such claim amendments should be submitted for consideration in a response to the Office Action.

35 U.S.C. §103(a) Rejections

35 U.S.C. §103(a) Rejection over *Timm* and *Lay*

The Office Action rejects claims 30-43 and 45-47 under §103(a) as being obvious in light of Timm et al., USPN 6,055,268 ("*Timm*") in view of Lay et al., USPN 6,862,293 ("*Lay*"). To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by one or more prior art references. *See* M.P.E.P. § 2143.03. The Office Action alleges that *Timm* discloses, *inter alia*, automatically aggregating multiple media access controllers (MACs), based, at least in part, on an identified communication capability of a remote device. *Lay* is further alleged to disclose aggregating via an attachment unit interface (AUI) having four (4) 10Gb/s

attachment unit interface (XAUI) channels, each channel supporting 2.5Gb/s communication rates which are aggregated to provide a 10Gb/s physical channel. For at least the following reasons, Applicants traverse the above rejection.

Applicants respectfully submit that each of the above rejected claims is not obvious in light of *Timm* and *Lay*, based at least on the failure of the references to teach or suggest (emphasis added):

“...**automatically aggregating** multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, **the aggregated MACs to communicate with the remote device** via a virtual data sub-channel within a physical data channel...”

as variously recited in each of current independent claims 30, 39 and 43.

In rejecting the above claims, the Office Action relies on *Timm*, fig. 7a; col. 7, lines 16 - 32; col. 18, lines 49 - 64; and col. 23, lines 20 - 57 as disclosing the above-recited claim limitations. More particularly, the last paragraph on page 3 of the Office Action states in a salient portion (emphasis added):

“...Timm discloses that after the initial channel probing period, **the MDLS modem at the subscriber-end** has determined the line code capability of the central office end modem and has a channel model for the downstream band and, similarly, the **MDSL modem at the central office end** has determined the line code capability of the subscriber-end modem and has a channel model for the upstream...”

However, the Office Action **fails** to indicate how “automatically aggregating multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, to establish a virtual data sub-channel within a physical data channel” is anticipated by one MDLS modem determining a line code capability of another MDLS modem and having a channel model of a downstream (or upstream) band.

An Examiner Interview was held by telephone on September 20, 2007 between Examiner Yves Dalencourt and Applicants' representative Dermot G. Miller (Reg. No. 58,309) to clarify the interpretation of *Timm* which was relied upon in the Office Action. Without agreeing as to the characterizations of *Timm* made in either the Office Action or

in the September 20, 2007 Examiner Interview, and in order to advance the application to allowability, Applicants amend the claims herein to further distinguish the invention from the *Timm* reference. More particularly, currently amended independent claims 30, 39 and 43 variously recite **aggregated MACs** to communicate with the **remote** device. Applicants note that the aggregated MACs, insofar as they are **to communicate with** the remote device, are to be **distinguished** from the remote device itself.

By contrast, any aggregated MACs in *Timm* are **not** communicating with a **remote** device at least insofar as one of these alleged MACs is **part of** and **local to** the alleged remote device itself. Furthermore, *Timm* fails to disclose **aggregated MACs to communicate with** the remote device, at least insofar as *Timm* discloses only a **single** modem to communicate with any such remote device. In other word, any multiplicity of MACs in *Timm* is not disclosed as an **aggregation** to communicate with a device which is **remote** to that aggregation.

Therefore, *Timm* fails to teach or suggest automatically aggregating multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, the **aggregated MACs to communicate with the remote device**. The Office Action does not offer *Lay* as teaching or suggesting those claim limitations which are not taught or suggested by *Timm* alone. Applicants submit that no combination of *Timm* and *Lay* teaches or suggests automatically aggregating multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, **the aggregated MACs to communicate with the remote device**. Therefore, the cited references fail to either teach or suggest at least one limitation of the invention as variously recited in each of independent claims 30, 39 and 43.

Accordingly, each of independent claims 30, 39 and 43 is non-obvious in light of *Timm* and *Lay*. If an independent claim is non-obvious under 35 U.S.C. §103, then any claims depending therefrom – e.g. claims 31-38, 40-42 and 45-47 – are also non-obvious. See M.P.E.P. §2143.03. For at least the foregoing reasons, Applicants request that the

above 35 U.S.C. §103(a) rejection of claims 30-43 and 45-47 based on *Timm* and *Lay* be withdrawn.

35 U.S.C. §103(a) Rejection over *Timm*, *Lay* and *XAUI/XGXS*

The Office Action rejects claims 38, 42, and 45 under §103(a) as being obvious in light of *Timm* et al., USPN 6,055,268 (“*Timm*”) in view of *Lay* et al., USPN 6,862,293 (“*Lay*”) and further view of 802.3ae 5 Criteria (which was referenced by “Chair’s Introductory Remarks” at IEEE 802.3 10Gb/s Task Force July 2000 Plenary Week, July 11-12, 2000) and “XAUI/XGXS Proposal” presentation at IEEE 802.3 10Gb/s Task Force May 2000 Interim Meeting Plenary Week, July 11-12, 2000.

In rejecting the above claims, the Office Action relies at least in part on the previously-discussed 35 U.S.C. §103(a) rejection of parent claims 31, 39 and 43. *XAUI/XGXS* is further alleged to disclose automatically aggregating 1Gb/s media access controllers (MACs) to establish the virtual sub-channel. For at least the following reasons, Applicants traverse the above rejection.

As discussed above, each of independent claims 30, 39 and 43 include at least one limitations which is not taught or suggested by *Timm* and *Lay*. In rejecting the above claims, the Office Action fails to provide any basis for *XAUI/XGXS* teaching or suggesting those claim limitations which are not taught or suggested by *Timm* and *Lay* alone. Applicants submit that no combination of *Timm*, *Lay* and *XAUI/XGXS* teaches or suggests automatically aggregating multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, **the aggregated MACs to communicate with the remote device**. Therefore, the cited references fail to either teach or suggest at least one limitation of the invention as variously recited in each of independent claims 30, 39 and 43.

Accordingly, each of independent claims 30, 39 and 43 is non-obvious in light of *Timm*, *Lay* and *XAUI/XGXS*. If an independent claim is non-obvious under 35 U.S.C. §103, then any claims depending therefrom – e.g. claims 38, 42, and 45 – are also non-obvious. *See* M.P.E.P. §2143.03. For at least the foregoing reasons, Applicants request

that the above 35 U.S.C. §103(a) rejection of claims 38, 42, and 45 based on *Timm, Lay* and *XAU/XGXS* be withdrawn.

New Claims

Applicants have added new claim 48, which depends upon claim 43. New claim 48 is supported in the original disclosure at least by original claim 27. It is Applicants' understanding that new claim 48 is allowable in view of the references cited in the Office Action. More particularly, the patentability of claim 48 is based on a failure of the cited reference to disclose at least one limitation of parent claim 43.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the objections and rejections have been overcome. Therefore, claims 30-43 and 45-48 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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